Criminal Law . . .
right to counsel

Building on the United States Supreme Court's 1964 decisions in *Massiah* v. *United States*, 377 U. S. 201, and *Escobedo* v. *Illinois*, 378 U. S. 478, the Supreme Court of California has reversed the capital-offense conviction of a San Quentin prisoner who killed a fellow inmate. The court held that the defendant's confessions were inadmissible because they were made at a time when he did not have counsel.

Massiah was reversed by the United States Supreme Court because the trial court had admitted incriminating statements made by the defendant after he had retained his own counsel and was free on bail after being indicted, the statements being made in the absence of counsel. In *Escobedo* an Illinois conviction was reversed because of the admission of preindictment statements made by the defendant during an interrogation in the absence of counsel after he had requested a lawyer and his lawyer had attempted, but was prevented, from, seeing him. In this case the Court declared that a person being questioned by police is entitled to counsel under the Sixth Amendment when "the investigation is no longer a general inquiry into an unsolved crime but has begun to focus" on the person under questioning and "the suspect has requested and been denied an opportunity to consult with his lawyer, and the police have not warned him of his absolute constitutional right to remain silent."

In the California case the body of the inmate who was killed was discovered early in the morning, and physical evidence soon linked the defendant to the crime. He was questioned by prison officials and members of the prosecuting attorney's office. Early in the afternoon he freely and voluntarily admitted the killing and his part in it. This and later incriminating statements were admitted at his trial. At no time during the questioning did he ask for an attorney and he was not warned of his right to remain silent.

The California Supreme Court ruled: "We hold, in the light of decisions of the United States Supreme Court, that, once the investigation focused on defendant, any incriminating statements given by defendant during interroga-

tion by the investigating officers became inadmissible in the absence of counsel and by the failure of the officers to advise defendant of his right to an attorney and his right to remain silent. The admission into evidence of a confession obtained in such a manner requires reversal."

The court refused to read *Massiah* and *Escobedo* as requiring the defendant to make a request for an attorney. It declared that "the constitutional right to counsel precludes the use of incriminating statements elicited by police during an accusatory investigation unless that right is intelligently waived; that no waiver can be presumed if the investigating officers do not inform the suspect of his right to counsel or his right to remain silent. . . . We find no strength in an artificial requirement that a defendant must specifically request counsel; the test must be a substantive one: whether or not the point of necessary protection for guidance of counsel has been reached."

The court refused to consider the admission of the confessions harmless error or to find the case one for the application of a California constitutional provision that "No judgment shall be set aside or new trial granted, in any case, on the ground of . . . the improper admission or rejection of evidence . . . unless, after an examination of the entire cause, including the evidence, the court shall be of the opinion that the error complained of has resulted in a miscarriage of justice."

Two judges, dissenting, felt that the conviction should not be reversed in view of the constitutional provision. "The evidence of the murder was extremely strong", they said. "It was indicated by three voluntary confessions and corroborated by circumstantial evidence. It was a cold and deliberate murder."

(*California* v. *Dorado*, Supreme Court of California, August 31, 1964, Tobriner, J., 61 A.C. 892, 394 P. 2d 952, 40 Cal. Rptr. 264.)